

## HB 168 – Establish *per se* Limit for THC in DUI cases

### Need for HB 168

The number of cases where marijuana is detected in drivers (and is one of the major causes of the accident) is growing. The Legislature should establish a reasonable standard for THC levels so marijuana users understand that use of marijuana should not immediately precede driving a motor vehicle.

Law enforcement is able to detect through experience and specialized training that someone is under the influence of marijuana. In circumstances involving DUI, they do this after someone has first shown impairment or bad driving (speeding, swerving, causing an accident, etc....)

### Testing Methodology

Blood is very reliable in detecting and quantifying active THC in the blood. Saliva and urine testing were taken out of the bill because they are less reliable.

Active THC (Delta-9) is present in the blood after very recent marijuana use, which is the impairing form of THC. Metabolites of THC, which are inactive, are not a part of this bill. Those are present in the blood days after marijuana consumption and are not impairing, which is why the bill specifically targets Delta-9. The 5 ng/ml limit proposed in this law is one of the least stringent in the country, but supported by scientific articles.

When somebody smokes marijuana the amount of delta-9-THC in their blood rises rapidly but then decreases once the person stops smoking. In the first couple of hours after smoking, the amount of delta-9-THC in the blood decreases rapidly. It is within these first couple of hours when the impairing effects of delta-9-THC are the greatest.

### Scientific Studies on 5ng/ml Limit

According to professionals at the Montana Crime Lab, scientists have concluded that 5 ng/ml of delta-9-THC in the blood can reasonably distinguish unimpaired from impaired drivers who pose a higher risk of causing accidents. They have also found that a *per se* level of 5 ng/ml will distinguish those individuals who have recently used the drug and are impaired, from those people who have gone hours or days since their last drug use.

Researchers from the National Institute on Drug Abuse, the National Institute of Health, and Harvard medical school did a study on 25 frequent long term marijuana users who had, on average, used marijuana for 8.8 years. Most participants had used marijuana within 24 hours of beginning the study and they were to remain drug free for 7 days, while researchers measured their blood delta-9-THC levels. Only 3 participants had blood levels above 1 ng/ml at some point during the 7 days, and 9 participants had no delta-9-THC detected in the blood at any time during the study. There was one individual whose blood delta-9-THC level was at 7 ng/ml, but that was on the first day of the study and it is not clear how much time had elapsed between the last use of marijuana and the first measurement. That individual's blood delta-9-THC level dropped to 2.9 ng/ml the next day. This study concluded that even heavy marijuana users will have their blood delta-9-THC levels fall below 5 ng/ml if they wait an appropriate amount of time after using the drug before they drive.

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### **Other States Acting on this Issue**

Washington state has established a 5 ng limit in their recreational use law for marijuana. Many other states have a zero tolerance law for THC in the blood, whether or not it is active THC. Some other states have a 2 ng/mL limit.

### **Montana Treats Cardholder Stricter than Illegal Users of Marijuana**

The 5 ng limit is already a part of the Montana code in the Medical Marijuana section (50-46-320 (7)(a), MCA). This 5 ng limit only applies to legitimate cardholders, however, and not illegal users of marijuana. The Legislature should pass HB 168 to make these laws apply to everyone, not just cardholders.

How 50-46-320(7)(a) currently reads: "(7) (a) A law enforcement officer who has reasonable cause to believe that a person with a valid registry identification card is driving under the influence of marijuana may apply for a search warrant to require the person to provide a sample of the person's blood for testing pursuant to the provisions of 61-8-405. A person with a tetrahydrocannabinol (THC) level of 5 ng/ml may be charged with a violation of 61-8-401."